B. REMARKS

The Examiner is thanked for the performance of a thorough search. By this amendment, Claims 1 and 19 have been amended. No claims have been canceled or added. Hence, Claims 1-4, 7-9, 11-22, 25-27, 29-36 and 39 are pending in this application. The amendments to the claims do not add any new matter to this application. All issues raised in the Office Action mailed June 19, 2006 are addressed hereinafter.

REJECTION OF CLAIMS 1-9, 11-27, 29-36, 39 AND 41 UNDER 35 U.S.C. § 112

Claims 1-4, 7-9, 11-22, 25-27, 29-36 and 39 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Office Action states that the specification describes a billing algorithm where the VSFs bill service fees to customers who own VSFs using a billing model for a VSF which is based on actual usage of the computing elements and storage elements of a VSF. There is no teaching for a reservation fee for reserving other computing resources from the plurality of computing resources that are not included in the set of one or more computing resources assigned exclusively to the customer.

The rejection is respectfully traversed for at least the reasons provided hereinafter.

As disclosed in Applicant's specification, for example, at page 45 line 11 et seq., "customers are charged a reservation fee to reserve a set of resources for a specified period of time." "Customers are also charged a usage fee for **resources, from the reserved resources, that are actually used during the specified period of time**" (*Id.*) (emphasis added). Clearly, according to this sentence, the resources that are actually used during the specified period of time are from the reserved resources. Based on common English usage, this sentence clearly means that the reserved resources may be a larger set than that of the actually used resources, because the latter come from the former.

Applicant's specification also explicitly states, "[c]ustomers are free to use **any number and type of resources** as long as their total rate of consumption (SU/Hr) is at or **below the rate that was reserved**" (*Id.*) (emphasis added). According to this sentence, the actual use of resources may be below the rate that was reserved. Furthermore, resources may be any number and type of resources. Therefore, this clearly conveys that not all the reserved resources may be

actually exclusively assigned or used. In other words, reservation fee for resources that not actually exclusively assigned or used may still be charged under Applicant's approach.

Similarly, at page 46 lines 5-7, Applicant's specification states, "[t]he customer can make any changes so long as the total SU/Hr consumption rate at any given time remain below the total SU/Hr capacity that was currently reserved." Clearly, according to this disclosure, the customer is charged a reservation fee for a certain number of resources including those that are not actually exclusively assigned or used since the actually used resources may be below the certain number that was reserved.

Based on the foregoing discussion, Applicant respectfully submits that an approach that involves a reservation fee for computing resources that are not actually exclusively assigned or used is disclosed in Applicant's written description. Therefore, reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, first paragraph, relating to the written description requirement is respectfully requested.

Claims 1-4, 7-9, 11-22, 25-27, 29-36 and 39 are also rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action states that the scope of "other computing resources" is indefinite in scope, in relation to "computing resources" in the preamble of Claims 1 and 19.

Claims 1 and 19 have been amended to address the question raised in the Office Action. Removal of this rejection under 35 U.S.C. § 112, second paragraph, with respect to Claims 1 and 19, and their dependent claims by reason of dependency, is respectfully requested.

REJECTION OF CLAIMS 1-9, 11-27, 29-36, 39 AND 41 UNDER 35 U.S.C. § 102(e)

Claims 1-9, 11-27, 29-36, 39 and 41 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Peterson et al.*, U.S. Patent No. 7,020,628 (hereinafter "*Peterson*"). It is respectfully submitted that Claims 1-4, 7-9, 11-22, 25-27, 29-36 and 39 are patentable over *Peterson* for at least the reasons provided hereinafter.

The Office Action does not provide any detail with respect to this rejection. Therefore, for convenience of reference, Applicant has substantially reproduced the arguments submitted in the response dated November 13, 2006, as follows.

CLAIM 1

Claim 1 is directed to a computer-implemented method for determining an amount to be billed to a customer for using and reserving computing resources. Claim 1 recites:

> "determining usage data that indicates usage, by the customer during a specified period of time, of a set of one or more computing resources assigned exclusively to the customer, wherein over time, computing resources may be de-allocated from the set of one or more computing resources assigned exclusively to the customer and additional computing resources may be allocated to the set of one or more computing resources assigned exclusively to the customer from a plurality of computing resources; and
>
> in a computer system determining the amount to be billed to the customer based upon the usage data, value data that specifies a number of service units that each computing resource from the set of one or more computing resources is capable of providing per unit time, and a reservation fee for reserving for the customer other computing resources from the plurality of computing resources that are not included in the set of one or more computing resources assigned exclusively to the customer."

Claim 1 is directed to a computer-implemented method for determining an amount to be billed to a customer for using and reserving computing resources. In the approach recited in Claim 1, the amount to be billed to a customer is based upon usage data, value data and a reservation fee. The reservation fee is "for reserving for the customer other computing resources from the plurality of computing resources that are not included in the set of one or more computing resources assigned exclusively to the customer." Thus, the approach includes billing a customer a reservation fee to reserve computing resources that are not currently assigned exclusively to the customer, but that might be in the future. This is useful in situations where a customer may need additional computing resources to handle an upcoming spike in demand, for example because of the launch of a new Website, but does not currently have sufficient resources to handle the demand. The billing of the customer includes the reservation fee for reserving the additional resources.

It is respectfully submitted that determining an amount to be billed to a customer for using and reserving computing resources by including a reservation fee for computing resources that are not currently exclusively assigned to a customer is not taught or suggested by *Peterson*. *Peterson* describes a method for tracking and billing computer system usage. In the approach of *Peterson*, a customer may be billed for the use of host computer systems, maintenance charges and miscellaneous charges. The miscellaneous charges include security costs or miscellaneous

software charges. There is no teaching or suggestion in *Peterson* of billing a customer for using and reserving computing resources based upon a reservation fee for reserving additional computing resources that are not yet exclusively assigned to the customer. The Office Action refers to the text at Col. 4, lines 47+ for teaching the limitations of Claim 6 relating to the reservation fee that were amended into Claim 1. Applicant has studied this and other portions of *Peterson* and does not find any mention or suggestion of any type of reservation fee being considered in the amount billed to a customer for using and reserving computing resources. It is therefore respectfully submitted that at least the Claim 1 limitation "determining the amount to be billed to the customer based upon ... and a reservation fee for reserving for the customer other computing resources from the plurality of computing resources that are not included in the set of one or more computing resources assigned exclusively to the customer" is not taught or suggested by *Peterson* and that Claim 1 is therefore patentable over *Peterson*.

CLAIMS 2-4, 7-9 AND 11-18

Claims 2-4, 7-9 and 11 -18 all depend from Claim 1 and include all of the limitations of Claim 1. It is therefore respectfully submitted that Claims 2-4, 7-9 and 11-18 are patentable over *Peterson* for at least the reasons set forth herein with respect to Claim 1. Furthermore, it is respectfully submitted that Claims 2-4, 7-9 and 11-18 recite additional limitations that independently render them patentable over *Peterson*.

CLAIMS 19-22, 25-27 AND 29-36

Claims 19-22, 25-27 and 29-36 recite limitations similar to Claims 1-4, 7-9 and 11-18, except in the context of computer-readable media. It is therefore respectfully submitted that Clams 19-22, 25-27 and 29-36 are patentable over *Peterson* for at least the reasons set forth herein with respect to Claims 1-4, 7-9 and 11-18.

CLAIM 39

Claim 39 has been amended to recite limitations similar to Claim 1, except in the context of an apparatus. It is therefore respectfully submitted that Clam 39 is patentable over *Peterson* for at least the reasons set forth herein with respect to Claim 1.

In view of the foregoing, it is respectfully submitted that Claims 1-4, 7-9, 11-22, 25-27, 29-36 and 39 are patentable over *Peterson*. Accordingly, reconsideration and withdrawal of the

rejection of Claims 1-4, 7-9, 11-22, 25-27, 29-36 and 39 under 35 U.S.C. § 102(e) as being anticipated by *Peterson* is respectfully requested.

CONCLUSION

It is respectfully submitted that all of the pending claims are in condition for allowance and the issuance of a notice of allowance is respectfully requested. If there are any additional charges, please charge them to Deposit Account No. 50-1302.

The Examiner is invited to contact the undersigned by telephone if the Examiner believes that such contact would be helpful in furthering the prosecution of this application.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: **Mail Stop AF**, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450

on May 8, 2007 by Martina Placid
Martina Placid